

4.0 SPECIAL PROVISIONS

4.01 Additional Development Rights for Cluster Subdivision Provision

4.01.1 Intent. The intent of this section is to provide for the use of additional development rights for the purpose of residential cluster subdivision intended to:

- Preserve unique and important natural features.
- Provide property owners of large tracts of land to preserve a majority of the land and have the option to develop a small portion.
- Provide for the continuation of agricultural operations.
- Protect the rural atmosphere.
- Properly plan and utilize land that may have areas unsuitable for development (wetlands, steep slope, wildlife habitat, streams, etc.)
- Encourage flexibility of design.
- Promote attractive and comprehensive site planning.
- Promote efficiency in the provision of public services, including roads.

4.01.2 Definitions Specific to the Cluster Subdivision Provision.

Cluster Subdivision. An acceptable clustered development designed to minimize the overall disturbance on the landscape, creating smaller lots which are grouped together on a site as opposed to scattered throughout a site, approved by a Conditional Use Permit (CUP) prior to subdivision review.

Additional Development Rights. Development rights in addition to principal development rights, that may be used only for cluster subdivision and if all criteria are met.

Qualified Parcel. Parcels recorded at the adoption of these Regulations that are within 10 percent of the required parcel size for the district, qualify for additional development rights. In the AR-80 District the minimum parcel size a parcel may be to qualify for the additional development right is 80 acres or parcels recorded at adoption of these Regulations that are within 10 percent, which includes parcels between 72 to 79 acres. In the RW-160 District the minimum parcel size a parcel may be to qualify for the additional development rights is 160 or parcels recorded at adoption of these Regulations that are within 10 percent, which includes parcels between 144 to 159 acres.

4.01.3 General Use of Additional Development Rights.

1. Development Rights (principal and additional development rights) are determined by the recorded parcel size at adoption of these Regulations.
2. Additional development rights only apply to parcels within the AR-80 and RW-160 Districts.

4.01.4 Authorized Development Rights Uses.

1. **RW-160 District.** A 160-acre parcel within the RW-160 District has one (1) development right (principal right) that may be used according to the principal uses allowed in the District, and three (3) additional development rights which may only be used for onsite subdivision if the criteria for Cluster Subdivision Provision are met.

An example of using a combination of development rights: A 160-acre parcel with a single-family dwelling (considered use of the principal development right) has three (3) additional development rights that may be used onsite to create a cluster subdivision pursuant to the criteria of Cluster Subdivision Provision (Section 4.01) and Conditional Use Permit (CUP) process of Section 5.04. Use of the Cluster Subdivision Provision and criteria applies to the creation of one (1), two (2), or three (3), additional lots using the additional development rights. If the 160-acre parcel is undeveloped, all four (4)-development rights (principal and additional) may be used to create a four- (4) lot cluster subdivision and open-space tract.

2. **The AR-80 District.** An 80-acre parcel with a single-family dwelling (considered use of the principal development right) has one (1) additional development right that may be used onsite to create a one- (1) lot subdivision pursuant to the criteria of Cluster Subdivision Provision (Section 4.01) and Conditional Use Permit (CUP) process of Section 5.04. Use of the Cluster Subdivision Provision and criteria applies to the creation of one (1) lot using the additional development right. If the 80-acre parcel is undeveloped, both development rights (principal and additional) may be used to create a two- (2) lot cluster subdivision and open-space tract.

4.01.5 Criteria for Cluster Subdivision and Use of Development Rights.

1. Minimum parcel size for participation of the Cluster Subdivision Provision is 80 acres in the AR-80 District; and 160 acres in the RW-160 District. Parcels of record at the adoption of these Regulations within 10 percent of the minimum parcel size also qualify for use of the additional development right(s) for cluster subdivision (72 to 79 acres in the RW-80 District; and 144- to 159 acres in the RW-160 District are qualified parcels).
2. At adoption of these Regulations, parcels developed with a single-family dwelling are considered to have used the principal development right; additional development right(s) may apply.

3. The maximum overall density using the Cluster Subdivision Provision is 1:40.
4. Minimum lot size is subject to Montana Department of Environmental Quality and Gallatin City-County Health Department.
5. Maximum lot sizes:
 - a. **Within the AR-80 District:** The area for all lots created pursuant to the Cluster Subdivision Provision is limited to 10 percent of the original parcel. If one (1) additional development right is used then the maximum lot size for the cluster-lot is eight (8) acres (for an 80-acre parcel); if two (2) or more development rights are used in accordance with the cluster criteria then the lot sizes may vary, but the cluster subdivision is limited to one ten-(10) acre parcel for development within the 10-percent area.
 - b. **Within the RW-160 District:** The area for all cluster-lots created pursuant to the Cluster Subdivision Provision is limited to 15 percent of the original parcel. If one (1) additional development right is used then the maximum lot size for the cluster-lot is the area that equals 15 percent of the original parcel; if two (2) or more development rights are used in accordance with the cluster criteria then the lot sizes may vary, but the cluster subdivision is limited to one ten- (10) acre parcel for development within the 15-percent area.
6. An open-space tract is created when all development rights are concentrated within a cluster subdivision on a maximum of 10 percent of a participating lot in the AR-80 District or 15 percent of a participation lot in the RW-160 District. The resulting open-space tract will consist of 90 percent of the participating lot in the AR-80 District and 85 percent of the participating lot in the RW-160 District. The designated open-space tract may be used for agricultural purposes but is prohibited from including dwellings or non-agricultural structures because all development rights have been applied to the cluster subdivision. Ownership of the open-space tract may be in common and managed by provisions in the Home Owner's Association; privately owned; or a combination of both.
7. Criteria from this list must be met to use development rights for cluster subdivision (items *a* and *b* below are mandatory and a minimum of four (4) others from *c* through *i* are required):
 - a. New lots are in close proximity to public roads. (mandatory)
 - b. New lots are contiguous as clustered. (mandatory)
 - c. Building sites are located in an area least likely to interrupt or detract from wildlife corridors, wetlands and scenic vistas, as seen from public roads and neighboring properties.
 - d. Building sites are located on the least fertile soils for agricultural uses, and in a manner, which maximizes the useable area remaining for such use.

- e. Building sites are along the edges of open fields adjacent to any woodland in order to reduce impact on agriculture; to provide summer shade and shelter from winter wind; and to enable new construction to be visibly absorbed by natural landscape features.
 - f. Building sites are located with the least disturbances to the natural topography, landscape, vegetation, and agriculture.
 - g. Building sites avoid exposed hillsides, ridgetop, and creekbanks.
 - h. Building sites are in close proximity to roads and existing dwellings.
 - i. New lots share driveway access.
8. Parcels undeveloped may use the principal development right to create a lot that is 90 percent of the original parcel in the AR-80 District or up to 85 percent of an original parcel in the RW-160 District and use the balance of the original parcel (either 10 percent or 15 percent) to cluster the remaining development rights (additional development rights) pursuant to the Cluster Subdivision Provision. In addition to the criteria above, to create a lot that is 90 percent of an original parcel in the AR-80 District or 85 percent of an original parcel in the RW-160 District, the following criteria shall be met. A minimum of four (4) from the criteria (a through g) below must be met:
- a. Building sites are located in an area least likely to interrupt or detract from wildlife corridors, wetlands and scenic vistas, as seen from public roads and neighboring properties.
 - b. Building sites are located on the least fertile soils for agricultural uses, and in a manner, which maximizes the useable area remaining for such use.
 - c. Building sites are along the edges of open fields adjacent to any woodland in order to reduce impact on agriculture; to provide summer shade and shelter from winter wind; and to enable new construction to be visibly absorbed by natural landscape features.
 - d. Building sites are located with the least disturbances to the natural topography, landscape, vegetation, and agriculture.
 - e. Building sites avoid exposed hillsides, ridgetop, and creekbanks.
 - f. Building sites are in close proximity to roads and existing dwellings.
 - g. New lots share driveway access.
9. The following statement shall be recorded on the plat: Tracts created by approval of a cluster subdivision pursuant to Reese Creek Zoning Regulations, Section 4.01, are not permitted any further conditional uses as described in Section 2.02.3 and Section 2.03.3.

4.01.6 Review Procedures. A Conditional Use Permit (CUP) is required for use of the Cluster Subdivision Provision. All cluster subdivision proposals shall meet the requirements of this Section and be reviewed through the CUP process pursuant to Section 5.04 prior to application for subdivision review. A CUP granting the use of a cluster subdivision shall comply with the provisions of this Section and the provisions of Section 5.04.

4.01.7 Application Requirements. The following material shall be submitted for Conditional Use Permit (CUP) review of cluster subdivision:

1. Demonstrate compliance with cluster provisions and criteria of this Section.
2. Provide a site plan or layout that identifies lot sizes, access, building sites, surface water, wooded area, and ridgelines.
3. If an open-space tract is created, provide a plan for its use that includes irrigation uses.
4. If an open-space tract is created, provide draft copies of proposed deed restrictions that specify use of and any remaining development rights; ensures the perpetuity of the open space designation; specifies any restricted uses.

4.01.8 Approval. The County Commission shall approve a Conditional Use Permit (CUP) for the use of Cluster Subdivision Provision if it complies with the provisions, criteria, and requirements of this Section and the general CUP criteria of Section 5.04.

4.01.9 Expiration. Subdivision of land is subject to review and separate application pursuant to the Gallatin County Subdivision Regulations. An approved Conditional Use Permit (CUP) permitting the use of the Cluster Subdivision Provision shall expire two (2) years from its approval date if a Preliminary Plat application for subdivision (that corresponds with the location, design, density, and number of lots of the approved CUP) has not been submitted to the County Planning Department.

4.02 Transfer of Development Rights (TDR) Option

4.02.1 County Transferable Development Rights Program. When these Regulations took effect Gallatin County had not created a Transferable Development Rights (TDR) program. The Reece Creek Advisory Committee proposed a TDR program. The proposed Reese Creek Zoning District TDR language is included in Appendix C of these Regulations. Appendix C provides a mechanism to create sending areas within a TDR program. Entitlements contained in Appendix C will not vest until Reese Creek Zoning District is part of a TDR program where the County Commission has established at least one County zoning district with receiving areas.